(1) Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

DAVID R. BURROUGHS
as father, next friend and guardian of his minor children,
Zachary R. Burroughs and Alexandra J. Burroughs
Petitioner

v.

DOMESTIC VIOLENCE PROJECT,
DELAWARE FAMILY COURT DOMESTIC VIOLENCE INTAKE UNIT,
BRIDGET POULLE, DEBBIE ALLEN,
HON. CAROLEE M. GRILLO, LOIS DAWSON, and
LINDA J. OLSEN BURROUGHS
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

PETITION FOR WRIT OF CERTIORARI

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July 9, 2000

36 pp

QUESTIONS PRESENTED

Is Federal Court *Rooker-Feldman* dismissal as to all Defendants and to all Claims erroneous, when any of the following apply:

(1) No State Court Appeal is possible,
(2) The Federal Court relief could neither affect nor change the outcome of any past State Court action,
(3) The State Court lacks subject matter jurisdiction as a matter of law, -
(4) State Court action is procured by fraud,
(5) Federal claims are dismissed against those Defendants who were not parties to any state litigation, or,
(6) Federal claims are dismissed, which are brought on behalf of minor Plaintiffs who are not parties in asserted state litigation?

LIST OF PARTIES

Petitioner **David R. Burroughs** and his two minor children, **Zachary R. Burroughs** and **Alexandra J. Burroughs,** are residents of the State of Maryland.

The Respondents, all of whom reside or are employed in the State of Delaware, are:

Linda Olsen Burroughs, Petitioner's former wife,

Lois J. Dawson, a Delaware attorney who is alleged to have advised Linda in Delaware with respect to her procurement of Delaware Protection from Abuse Orders, but who made no appearance representing Linda in either Delaware or Maryland,

The Honorable **Carolee M. Grillo**, Commissioner of the Delaware Family Court,

Debbie Allen of the Delaware Family Court's Domestic Violence Intake Unit; and

Bridget Poule of the Delaware Domestic Violence Project.

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Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion entered in this proceeding on April 10, 2000, by the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The memorandum Opinion of the Court of Appeals (unpublished) and the Order of the District Court for the District of Delaware (unpublished), appear as Appendices A and B respectively.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on April 10, 2000. This petition for certiorari is being filed within 90 days of that date. Jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The federal Civil Rights action was brought under 42 U.S.C. §§ 1983, 1985 and 1986.

Included in the relief sought, was general enjoinment of gender-discriminatory application of Delaware State Law pertaining to Domestic Violence, namely, Del. Code Ann. 10 § 1043

STATEMENT OF THE CASE

On October 26, 1995, in the Cecil County, Maryland, David and Linda. Burroughs entered into a separation agreement for inclusion in ongoing, jurisdictionally exclusive Maryland dissolution and child custody proceedings, which provided for the joint custody of their children.

Within two months of the agreement, the forum-shopping Ms. Burroughs sought the advice of a Delaware attorney, Lois Dawson, to discuss what is asserted to be Ms. Burroughs' desire to evade, thwart, or nullify the lawful Maryland joint custody agreement. Dawson allegedly

counseled Linda Burroughs to obtain a Delaware Protection from Abuse Order pursuant to Del. Code Ann. 10, § 1043 (1996) in order to obtain an ***ex parte*** custody award. Linda Burroughs then perjured herself, at the suggestion, or gender-biased advocacy, of Ms. Allen , during a December 27, 1995 Delaware Court proceeding, over which Commissioner Grillo presided, in order to obtain an ***ex parte*** custody order. As a result of the alleged perjury, Commissioner Grillo issued a Protection from Abuse Order which granted custody to Ms. Burroughs, even though the Commissioner was fully aware of the Maryland divorce proceedings and Maryland's **exclusive jurisdiction** over the pending divorce action and, under the **Uniform Child Custody Jurisdiction Act (UCCJA)**[1], over child custody.

Linda Burroughs is alleged to have perjured herself for a second time in a jurisdictionally void Delaware custody petition filed on January 5, 1996. In that filing, Linda Burroughs claimed that David Burroughs had failed to comply with his child support obligations. As a direct result of this string of perjurious testimony, it is alleged that the Honorable Frederick Kenney, another Commissioner in the Family Court, entered a Protection from Abuse Order against David Burroughs two weeks later, during a proceeding that Mr. Burroughs attended, which essentially prohibited him from having any contact with his former wife. Linda Burroughs retained physical possession of their two children, by using the no-contact order to prevent Mr. Burroughs from physically picking up the children from her.

It is further alleged that this ruling, as well as the others which led up to it, were the product of a conspiracy between Linda Burroughs, Ms. Dawson, Commissioner Grillo, Ms. Allen, and Ms. Poule to deprive David Burroughs of his constitutional and custodial rights as a parent, his constitutional rights to due process and equal protection, as

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[1] ~~13 Del.C.~~ §§ 1901-1925; Md. Code, Family Law, §§ 9-201-224; ~~*see also Ankenbrandt v. Richards,*~~ 112 S.Ct. 2206 (1992).

well as to deprive the Plaintiff children of their independent rights to be parented by their father.

Several months later, on September 24, 1996, Mr. and Ms. Burroughs attended a hearing to finalize their divorce, in the Cecil County, Maryland Courthouse. In said decree the Court specifically ordered the parties to communicate by telephone and mail regarding the children. After the proceeding, Mr. Burroughs was told by Ms. Burroughs' Maryland divorce counsel (not Lois Dawson) to contact Ms. Burroughs to clear up some scheduling conflicts concerning the children. Three days later, Mr. Burroughs wrote to his former wife but received no reply. However, on October 5, 1996, he ran into her at a school event in Maryland for one of their children. Mr. Burroughs, used the opportunity to speak to her about this scheduling conflict but, again, received no response from Ms. Burroughs, who apparently refused to discuss the matter with him and walked away. Ten days later, Mr. Burroughs again wrote to Ms. Burroughs concerning essentially the same subject matter.

Linda Burroughs then procured three contempt charges from the Delaware Court as a result of the two letters and one school visit, which she alleged violated the terms of the January 19, 1996 Protection from Abuse Order.

Consequently, Mr. Burroughs, who resided in Northern Maryland, but was employed across the State line in Delaware, was arrested in Delaware and arraigned before Commissioner Grillo on November 4, 1996, who set bail at $1,000 for each charge. The Delaware Attorney General's office, however, declined to prosecute, and therefore no appealable judgment arose from the arrest, nor from Linda Burroughs' tactical contempt claims.

Petitioner and his children sought, in the subject Federal Civil Rights action, a minimum of $1 million in compensatory damages and $4 million in punitive damages from Respondent Linda J. Olsen Burroughs. In addition to a series of declaratory judgments, Mr. Burroughs and his children also sought an injunction prohibiting the

disbursement of federal funds to the Delaware Domestic Violence Project and the Delaware Court's Domestic Violence Intake Unit, of which Ms. Poule and Ms. Allen are respective members, on the basis that they and their agencies invidiously discriminate against all members of the male gender who appear before the Delaware Family Court, including, as a matter of standing to seek such relief, himself.

The allegations presented in the erroneously dismissed Amended Complaint include the existence of a massive state-operated system purportedly providing "Protection from Abuse", that such system is heavily stacked in favor of female complainants , and moreover, that the state and its agencies actively promote the wrongful, biased presumption in administratively guiding potential complainants to seek wrongful ex-parte "PFAs", that only males are the perpetrators and only females are the victims of domestic violence. At the point of District Court dismissal, Appellant had already submitted state documents showing the likelihood of Plaintiffs being able to establish the existence of such overwhelming anti-male bias in Delaware government and its institutions. (See Appendix C)

The District Court (Appendix B) dismissed all claims as to all defendants, in what is asserted herein to be an erroneous and overbroad invocation of the ***Rooker-Feldman Doctrine***,[2] under jurisdictional, procedural and factual

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[2] "Thus, although Mr. Burroughs claims that the "focus" of his civil rights action is the "vindication of [his] federal constitutional rights [which were] systematically and invidiously infringed" upon by the defendants, the court believes that these rights are "inextricably intertwined" with the state court proceedings. ***See Behr v. Snider***, 900 F.Supp. 719, 724-25 (E.D. Pa. 1995). .....For this very reason, the court cannot exercise jurisdiction over this lawsuit. ***See Logan***, 965 F.Supp. at 699' ***Brookes-Jones***, 916 F. Supp. At 281-82; ***Behr***, 900 F.Supp. at 724-25. As all of these courts have noted, the appropriate avenue of relief begins with the state appellate process and, ultimately, ends at the United States Supreme Court." **District Court Order herein, Appendix B**

conditions which, as argued below, do not serve the public-policy purposes of the . ***Rooker-Feldman Doctrine***.

Overbroad dismissal is particularly onerous, to the extent that it prevents consideration and remedy of the public-detrimental, federally funded, generally invidious, gender-discriminatory misuse of purported "Domestic Violence" statutes almost exclusively against men, as a tactical means for creating ***de facto*** maternal custody orders outside the scope of Delaware's dissolution statutes. (See Appendix C, re: Delaware's institutionalized discrimination.)

The gravamen of this Petition for Certiorari is that such contrived dismissal offends the Constitutional and statutory duty of a Federal Court to hear well-pleaded Complaints, within its subject matter jurisdiction, and contravenes underlying public policy considerations, when one or more of the following asserted exceptions to invocation of the ***Rooker-Feldman Doctrine*** exist:

(1) No State Court Appeal is possible,
(2) The Federal Court relief could neither affect nor change the outcome of any past State Court action,
(3) The State Court lacks subject matter jurisdiction as a matter of law,
(4) State Court action is procured by fraud,
(5) Federal claims are dismissed against those Defendants who were not parties to any state litigation, or,
(6) Federal claims are dismissed, which are brought by, or on behalf of minor Plaintiffs, who are not parties in asserted state litigation.

REASONS FOR GRANTING THE WRIT

In their zeal to defer to State Courts, and perhaps to limit their own caseloads, lower Federal Courts appear to be attempting to expand the scope and invocation of the ***Rooker-Feldman Doctrine*** beyond the public policy intent expressed in the two, sixty-year-apart cases from which the Doctrine arose.[3]

The Federal case for which Petitioner herein seeks a Writ of Certiorari, dismissed solely on ***Rooker-Feldman*** grounds, is an opportunity for the Supreme Court to examine such doctrine expansion, and to enlighten the lower Federal Courts as to both proper use and limitation of the doctrine

Surely, there exist Federal Court cases in which a disappointed State Court litigant seeks a ***de-facto*** appeal, affecting the outcome of a final State Court judgment to which the Federal litigant was a party, in avoidance of the only proper appellate route, upward through the State Appellate system to the United States Supreme Court. The ***Rooker-Feldman Doctrine*** stands as a lawful blockage to such attempted forum-shopping.

But there are other cases in which factual circumstances, relief sought, and party standing are outside the ***Rooker-Feldman*** scenarios contemplated by the Supreme Court. Federal Court dismissal of such cases does not serve the underlying purposes of federalism, comity, and the avoidance of forum-shopping.

The case herein, is one seeking prospective and global relief, not from the outcome of State Court decisions, but for protection from future misuse of Delaware's "Protection from Abuse" statutes, as well as from the pervasively gender biased, abusive-to-males, institutionalized tactics and advisory programs of several federally financed Delaware advocacy, intake and referral organizations and their respondent representatives named herein.

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[3] ***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 (1923); ***District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462 (1983)

For the reasons stated in the following arguments, Petitioner may be an ideal party to prosecute such relief, because of his situation, and that of his Plaintiff children, because none of the Federal Respondents except the ex-wife were parties-litigant to a related State Action, and because of the non-appealable nature of the underlying State Court matters. Petitioner and his children have Federal Court standing, but based upon these facts, should be deemed immune to ***Rooker-Feldman*** dismissal.

I.
No purpose is served by *Rooker-Feldman* Dismissal when there is no possibility of Federal substitution for a State Appeal

First, it should be recognized that the Maryland dissolution of marriage is final, including stipulated joint custody of the minor children; that it has not been timely Appealed in Maryland, and that no party herein has asserted any need nor desire to appeal the Maryland final decree. The locus of all Federal relief sought herein is Delaware, and the Federal Orders and Affirmances herein all focus ***Rooker-Feldman*** dismissal exclusively upon Delaware State Court matters, and not the Maryland dissolution.

The Delaware Protection From Abuse Orders expired automatically, pursuant to Delaware statute, one year after their issuance. Clearly, issuance of these expired Court Orders is not appealable.

The attempted Delaware Contempt action(s) arising from the writing of two letters and the inadvertent contact at a school function were declined for prosecution in Delaware, and therefore never reached any appealable judgment.

There is no state court judgment sought to be reviewed, nor was there an appealable state order in the first instance. Petitioner effectively won administratively on the issue of whether he was in contempt of the wrongful Delaware Injunction, because the Delaware prosecuting agency

recognizing the wrongful conduct of Ms. Burroughs, refused to prosecute him. Ministerial setting of bail by Commissioner Grillo does not constitute judicial ruling on the merits regarding potential contempt prosecution. Inherently, one cannot appeal the outcome of a nonexistent prosecution.

Therefore, ***Rooker Feldman*** dismissal to avoid usurping a nonexistent State Appeal process has no foundation, nor public policy purpose, no matter how "inextricably intertwined" a District Court deems the underlying fact patterns.

II.

Rooker-Feldman Dismissal does not protect federalism or comity when the granting of Federal relief could not retroactively affect the outcome of State Court proceedings

The Federal relief sought by Petitioner and his children includes compensatory and punitive damages against the ex-wife, for her own personal misconduct in perjuring herself, in misusing a Protection From Abuse Order for the actual purpose of denying lawful access between father and children and for the actual purpose of custodial forum shopping. Granting these damages would not change the outcome of the Delaware proceedings, regardless of whether a Federal District court commented critically about them.

The District Court opined, and the Third Circuit Court of Appeals agreed, that

> "Specifically, any "vindication" of his rights would necessarily require a finding that (1) Commissioner Grillo incorrectly or improperly entered the two ex parte custody orders which led up to the January 19, 1996 Protection from Abuse Order to which Mr. Burroughs consented, (2) the Protection from Abuse Order was itself incorrectly or improperly granted,

despite the fact that Mr. Burroughs consented to it, and then (3) Commissioner Grillo incorrectly or improperly held Mr. Burroughs in contempt for violating the provisions of this order by twice writing to his former wife and once contacting her at a school event." Appendix B

Such opinion is not only a ***non sequitur***, it is factually flawed. The rights Petitioner seeks to vindicate involve prospective enjoinment of jurisdictionally unfounded custody awards, the right to be treated equally under a Delaware statute and system which is heavily biased against males, and the global relief of denying federal funding [4] to the Delaware agencies which perpetuate gender-biased referrals for court services. The past Delaware Court events serve only to establish Petitioner's standing to seek prospective relief. The Federal Court could no more undo the past, short-term damage to the relational interests between father and children than the Supreme Court could have undone the past "abortion or birth" crisis in ***Roe v. Wade***,[5] which reached the Supreme Court more than nine months after conception by the affected mothers. Yet the Supreme Court provided a prospective remedy by ruling on matters which were "capable of repetition, yet evading review."

No matter whether the Federal District Court ruled at all regarding the propriety or impropriety of Grillo's non-appealable past adjudications, it retains the jurisdiction to prospectively enjoin future infringements of the rights of Petitioner and his children by all Respondents.

The above-quoted ruling is also factually in error: Commissioner Grillo never had an opportunity to find Petitioner in Contempt. She merely set bail. There was no prosecution, and therefore no contempt finding.

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[4] Re standing, ***see: Flast v. Cohen***, 392 U.S. 83, 878 S.Ct. 1942, 20 L.Ed. 2d 947 (1968)

[5] ***Roe v. Wade***, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973)

III.
A State Court decision which lacks Subject Matter Jurisdiction does not qualify for Federal *Rooker-Feldman* Dismissal.

While Federal Courts cannot award Child Custody, they may take judicial notice of State Court custody awards as factual foundations for Federal Civil Rights and tort cases.[6]

Similarly, Federal Courts may take judicial notice of facial absence of State Court subject matter jurisdiction without being obliged to invoke the ***Rooker-Feldman Doctrine***. If the state court did not have subject matter jurisdiction over the prior action, its orders would be void ***ab initio*** and subject to attack notwithstanding ***Rooker-Feldman***.[7]

Commissioner Grillo's actual Delaware award of custody, as foundationally alleged in the Amended Complaint, and supported by the transcript of her ***ex-parte*** initial Delaware hearing regarding the first Protection from Abuse petition, was made with Grillo's ***actual*** knowledge that the ongoing Maryland dissolution action vested exclusive subject matter jurisdiction regarding child custody in Maryland. To the extent that the Delaware child custody award was without subject matter jurisdiction, it was void ***ab initio*** and therefore not an appropriate ground for Federal Court ***Rooker Feldman*** dismissal.

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[6] ~~***Ankenbrandt v. Richards***, 112 S.Ct. 2206 (1992).~~

[7] ~~***James v. Draper (In re James)***, 940 F.2d 46~~, 52 (3d Cir. 1991); ***Lake v. Capps (In re Lake)***, 202 B.R. 754, 758 (B.A.P. 9th Cir. 1996) ("A state court judgment is subject to collateral attack if the state court lacked jurisdiction over the subject matter or the parties, or the judgment was procured through extrinsic fraud."). (emphasis supplied)

IV.

A State Court decision procured by fraud does not merit Federal *Rooker-Feldman* Dismissal.

Respondent Linda J. Olsen Burroughs is alleged in the Amended Complaint to have procured all of the Delaware Orders by fraud and perjured testimony, alone, and in conspiracy with other Respondents. The extent or existence of that fraud should have abided Federal trial, and should have been presumed true for purposes of the multiple Motions to Dismiss and Motions for Summary Affirmance.

An exception to the ***Rooker-Feldman Doctrine*** has been recognized when the state court judgment was "procured through fraud, deception, accident, or mistake . . ."[8]

V.

State Court Non-Parties are not entitled to benefit from Federal *Rooker-Feldman* Dismissal.

Except for Petitioner David R. Burroughs and Respondent Linda J. Olsen Burroughs, none of the Federal Parties may benefit from Federal Court ***Rooker-Feldman*** dismissal. The repose available to prevailing State Court parties when a State Court decision is either affirmed on appeal or becomes ***res judicata*** upon expiration of time to perfect a State Appeal, is not available to State non-parties.

Because Respondents other than Linda Burroughs were not parties in the Delaware State case(s), Petitioner David Burroughs had no reasonable opportunity to bring the present Federal Claims against them in the Delaware court.[9]

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[8] ***Sun Valley Co. v. Detroit Marine Terminals, Inc. (In re Sun Valley Foods Co.)***, 801 F.2d 186, 189 (6th Cir. 1985) (quoting ***Resolute Ins. Co. v. North Carolina***, 397 F.2d 586, 589 (4th Cir. 1968)).

[9] ***Rooker-Feldman*** will not apply when the party had no "reasonable opportunity to raise his federal claim in state proceedings." ***Wood v. Orange County***, 715 F.2d 1543, 1547 (11th Cir.1983), *cert. denied*, 467 U.S. 1210, 104 S. Ct. 2398, 81 L. Ed. 2d 355 (1984).

VI.

Federal *Rooker-Feldman* Dismissal is improper when applied to Federal Plaintiffs who were not parties in the asserted State Court action, and therefore had no standing to appeal same

The District Court dismissed the entire Federal Action, including claims brought by or on behalf of Plaintiff minor children Zachary R. Burroughs and Alexandra J. Burroughs. These Plaintiffs were not parties-litigant in any State Court action, and therefore had no standing to appeal in State Court.

"...[t]he ***Rooker-Feldman*** doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court."[10]

"It is true that . . . the ***Rooker-Feldman*** rule does not bar a federal claim brought by one who was not a party to the state court action and therefore not in any position to seek appellate review of the state court judgment."[11]

CONCLUSION

The Supreme Court should grant Certiorari and thereafter remand the matter for further proceedings.

David R. Burroughs

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185 Springfield Dr., North East MD 21901 (410) 392-0775

July 9, 2000

[10] ***United States v. Owen***, 54 F.3d at 274.

[11] ***Snider v. City of Excelsoir Springs, Mo.***, 154 F.3d 809, 812 (8th Cir. 1998) (citing ***Johnson v. DeGrandy***, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994).

APPENDIX A
(Third Circuit Memorandum)
Filed April 10, 2000
UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO.99-5507

DAVID R. BURROUGHS, as father, next friend & guardian of his minor children Zachary R. Burroughs and Alexandra J. Burroughs,
Appellant

v.

LINDA J. OLSEN BURROUGHSA; CAROLEE M. GRILLO, Commissioner Delaware Family Ct., Individually; LOIS DAWSON; DOMESTIC VIOLENCE PROJECT, Bridget Poule, Dir.; JOHN OR JANE DOE NOS. 1 THROUGH 5 OF THE DOMESTIC VIOLENCE PROJECT, who shall be made known by discovery; DEL. FAMILY CT. DOMESTIC VIOLENCE INTAKE UNIT, Debbie Allen, Supervisor; JOHN OR JANE DOE NOS. 1 THROUGH 5 OF THE DEL. FAMILY CT. DOMESTIC VIOLENCE INTAKE UNIT, who shall be made known by discovery; BRIDGET POULLE; DEBBIE ALLEN
Appellees.

On Appeal from the United States District Court
For the District of Delaware

(D.C. Civ. No. 97-cv-00701)
District Judge: Honorable Gregory M. Sleet

Submitted Under Third Circuit LAR 27.4 and I.O.P. 10.6
February 24, 2000

Before: BECKER, Chief Judge,
McKEE and BARRY, Circuit Judges
(Filed April 10, 2000)

OPINION

PER CURIAM

David R. Burroughs appeals from the District Court's order dismissing his complaint for lack of subject matter jurisdiction. For the following reasons we shall grant the appellees' motions for summary affirmance.

I

In March 1998 Burroughs filed an amended complaint in the United States District Court for the District of Delaware alleging various civil rights violations by the defendants, as well as the torts of intentional infliction of severe emotional distress and interference with contract. The defendants are: Linda Olsen Burroughs, Burroughs' former wife, from whom he is now divorced; Lois J. Dawson, the attorney who represented Linda in legal proceedings related to their divorce; the Honorable Carolee M. Grillo, Commissioner of the Delaware Family Court, who presided over these proceedings; Debbie Allen of the Family Court's Domestic Violence Intake Unit; and Bridget Poule of the Domestic Violence Project.

Burroughs alleges the following events: In October 1995, in a Maryland state court, the Burroughs entered into a

separation agreement which provided for the joint custody of their children. Within two months of the agreement Linda sought the advice of a Delaware attorney, Dawson, to discuss legal options concerning custody. Dawson counseled Linda to obtain a Protection from Abuse Order pursuant to Del. Code Ann. 10 § 1043 as a means of obtaining an ***ex parte*** custody award. Linda subsequently perjured herself, at the suggestion of Allen and Poule, during a Family Court proceeding over which Grillo presided, in order to obtain an ***ex parte*** custody order. Grillo issued a Protection from Abuse Order granting custody to Linda even though Grillo was fully aware of the Maryland divorce proceedings and Maryland's exclusive jurisdiction over the pending divorce action.

Burroughs also alleges that, in a subsequent custody proceeding before Grillo, Linda perjured herself again, claiming Burroughs had failed to comply with his child support obligations. As a result of Linda's repeated perjury, the Honorable Frederick Kenney, another Commissioner of the Family Court, entered a Protection from Abuse Order against Burroughs, essentially prohibiting him from having any contact with Linda, who retained custody of their children. Several months later, after their divorce was finalized, Burroughs was informed by Linda's counsel to communicate by mail to resolve scheduling conflicts concerning the children. Burroughs wrote to Linda; but received no reply. He later encountered her at a school event for one of their children; when he failed to obtain a response from Linda there, he wrote to Linda again. In response to the two letters and the encounter at the school, Linda obtained three contempt charges from the Family Court. These incidents violated the terms of the previous Protection from Abuse Order, and as a result Burroughs was arrested and arraigned before Grillo. However, the government decided not to prosecute.

According to Burroughs all of these events were caused by a conspiracy among the defendants to deprive Burroughs

of his constitutional and custodial rights as a parent as well as his constitutional rights to due process and equal protection. He seeks damages, declaratory relief, and an injunction preventing the disbursement of federal funds to the Domestic Violence Project and the Domestic Violence Intake Unit, which, according to Burroughs, discriminate against all men who appear before the Family Court [1]

The defendants moved to dismiss. The District Court did so on grounds of the Rooker-Feldman doctrine, which prevents federal courts from sitting as appellate panels reviewing state court decisions, and from reviewing federal claims which are inextricably intertwined with state court decisions. The District Court found that Burroughs' constitutional claims were inextricably intertwined, since he could not prevail without the District Court's finding that Grillo incorrectly entered the custody orders leading up to the Protection from Abuse Order, that the Protection from Abuse Order was incorrectly granted, and that Grillo improperly held Burroughs in contempt for violating the conditions of the order. The appropriate avenue of relief is the state appellate process, not collateral review in federal court. Accordingly, the District Court dismissed the complaint for lack of jurisdiction. This appeal followed. Before us are the appellees' motions for summary affirmance.

II

The Rooker-Feldman doctrine provides that federal district Courts lack subject matter jurisdiction to review the final adjudication of a state courts (sic), including lower state courts, or to evaluate constitutional claims that are

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[1] The District Court declined to interpret Burroughs' allegations as evincing an intent to sue as a representative of the class of men who have suffered discrimination as a result of these alleged policies, because the caption states that he is appearing individually and on behalf of his children, because his allegations appear to have been made solely to establish the factual basis for his equal protection claim, and because Burroughs had not filed for class certification. We perceive no error in this interpretation of the complaint

inextricably intertwined with the state court's decision in a judicial proceeding. In other words, the doctrine "precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling." FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). Thus, as we explained in E.B v. Veniero, 119 F.3d 1077, 1092 (3d Cir. 1997):

> If a litigant resorts to a state court and suffers an adverse judgment, a lower federal court must respect that judgment unless and until it is overturned. The litigant's only remedy is by way of appeal through the state court system and by way of petition to the Supreme Court of the United States thereafter.

We agree with the District Court that Burroughs' complaint falls squarely within the class of actions barred by the Rooker-Feldman doctrine because Burroughs could not prevail unless the District Court found that the state court decisions in question were erroneous. It is of no consequence that, as Burroughs insists, he does not ***seek*** to overturn any state court decisions. Since "no substantial question is presented" by this appeal, LAR 27.3, we grant the appellees' motions and shall affirm the District Court's order.

APPENDIX B
(District Court Order)
Filed June 2, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID R. BURROUGHS,
individually and as father,
next friend, and guardian of
his minor children ZACHARY
R. BURROUGHS, and
ALEXANDRA J. BURROUGHS
Plaintiffs,

v.

LINDA J. OLSEN BURROUGHS, et.al.,
Defendants.

Civil Action
No. 97-701-GMS

ORDER

On March 11, 1998, David J. Burroughs, on behalf of himself and his two minor children, Zachary and Alexandra, filed a thirteen-count amended complaint with this court, alleging several violations of his civil and constitutional rights, *see* 42 U.S.C. §§ 1981-1988 (1994), by the defendants[1] In addition to the torts of intentional or negligent

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[1] Although Mr. Burroughs asserts claims under Sections 1981 - 1988 of Title 42 of the United States Code, the court believes that he only intends to assert claims Sections 1983, 1985 and 1986.

Specifically, as the court will soon discuss, Mr. Burroughs alleges that he was discriminated against on the basis of his gender. As a result, he cannot as a matter of law maintain a cause of action under Sections 1981 and 1982. See, e.g., Bobo v. ITT, Continental Baking Co., 662 F.2d 340, 344-45 (5th Cir. 1981)(concluding that these provisions relate only to racial discrimination)(collecting cases). Furthermore, since Section 1984 is omitted from the provisions of Title 42, Mr. Burroughs could not possibly maintain a cause of action under it. In addition, given the

infliction of severe emotional distress and interference with contract. These five defendants are (1) Linda Olsen Burroughs, Mr. Burroughs' former wife, (2) Lois J. Dawson, an attorney at law, who represented Ms. Burroughs in a series of legal proceedings related to the divorce, (3) the Honorable Carolee M. Grillo, Commissioner of the Delaware Family Court, who presided over these related proceedings, (4) Debbie Allen of the Family Court's Domestic Violence Intake Unit, and (5) Bridget Poule of the Domestic Violence Project. All five of these defendants have moved to dismiss the complaint against them under the ***Rooker-Feldman*** doctrine. Finding that the claims brought in this lawsuit are "inextricably intertwined" with a series of Family Court proceedings relating to the Burroughs' divorce, the court concludes that exercising of jurisdiction over this matter would not be appropriate. As a consequence, it will grant the defendants' motions and dismiss the action.

I. BACKGROUND

On October 26, 1995, in the Circuit Court for Cecil County, Maryland, Mr. And Ms. Burroughs entered into a separation agreement, which provided for the joint custody of their children. However, within two months of the

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express language of Section 1987, Mr. Burroughs cannot maintain a cause of action under this provision, either. See 42 U.S.C. § 1987 (affording "United States Attorneys, marshals, and deputy marshals the ... power to arrest, imprison, or bail offenders" of the civil rights statutes). Finally, in the opinion of the court, the most relevant language of Section 1988 from Mr. Burroughs' perspective, see id at § 1988(b), will only come into play if he ultimately prevails in this lawsuit.

For these reasons, on the defendants' motions to dismiss, the court will only examine whether Mr. Burroughs has alleged sufficient facts to establish a cause of action under Sections 1983, 1985 and 1986 which essentially prohibit (1) the denial of a constitutional right by individuals acting under color of state law, see id at § 1983, (2) conspiracies to deny these constitutional rights, see id. § 1985, and (3) the negligent failure to prevent the denial of such a right b y a person in power with the authority to stop it. See id at § 1986.

agreement, Ms. Burroughs sought the advice of a Delaware attorney, Ms. Dawson, to discuss her various legal options concerning custody. Mr. Burroughs claims that Ms. Dawson then counseled his former wife to obtain a Protection from Abuse Order pursuant to Del. Code Ann. 10, § 1043 (1996) in order to obtain an ***ex parte*** custody award. According to Mr. Burroughs, his former wife then perjured herself, at the suggestion of Ms. Allen and Ms. Poule, during a December 27, 1995 Family Court proceeding, over which Commissioner Grillo presided, in order to obtain an ***ex parte*** custody order.[2] Mr. Burroughs claims that, as a result of this perjury, Commissioner Grillo issued a Protection from Abuse Order which granted custody to Ms. Burroughs, even though the Commissioner was fully aware of the Maryland divorce proceedings and that State's "exclusive jurisdiction" over the pending divorce action. But see Del. Code Ann. Tit. 13, §§ 723((a), 1903(3)(b)(1996).

In addition, Mr. Burroughs alleges, his former wife perjured herself for a second time before Commissioner Grillo in a custody proceeding held on January 5, 1996. Mr. Burroughs alleges that, during this hearing, his former wife claimed that he had failed to comply with his child support obligations. According to Mr. Burroughs, as a direct result of this string of perjurious testimony, the Honorable Frederick Kenney, another Commissioner in the Family Court,[3] entered a Protection from Abuse Order against him two weeks later,

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[2] Mr. Burroughs, however, fails to provide the court with any indication of the substance of this allegedly perjurious testimony. Nevertheless, given some of the attachments to the dispositive motions, it appears as if Ms. Burroughs claimed that on December 25, 1995, her former husband called her on the telephone, "screaming and accusing her of stealing." Ms. Burroughs also alleged that, the next day, when her former husband stopped by to pick up the children for a visit, he "push[ed] his was (sic) into her house," making threats like "You can't hide from me, I'll find you," "Watch your back," and "I'll do my thing to protect my rights." According to Ms. Burroughs, it was at this time that he "put his hands around her neck."

[3] Commissioner Kenney has not been named in this lawsuit.

during a proceeding that he attended, which essentially prohibited him from having any contact with his former wife who retained custody of their two children. [4] Mr. Burroughs claims that this ruling as well as the others which led up to it were the product of a conspiracy between his former wife, Ms. Dawson, Commissioner Grillo, Ms. Allen, and Ms. Poule to deprive him of his constitutional and custodial rights as a parent as well as his constitutional rights to due process and equal protection.

To further complicate matters, several months later, on September 24, 1996, Mr. and Ms. Burroughs attended a hearing to finalize their divorce, apparently, in the Cecil County Courthouse. According to Mr. Burroughs, after the proceeding, he was told by Ms. Burroughs' counsel to communicate by mail to clear up some scheduling conflicts concerning the children. [5] Three days later, Mr. Burroughs wrote to his former wife but received no reply. However, on October 5, 1996, he ran into her at a school event for one of their children. According to Mr. Burroughs, he used the opportunity to speak to her about this scheduling conflict but, again, received no response from Ms. Burroughs, who apparently refused to discuss the matter with him and walked away. Ten days later, Mr. Burroughs again wrote to Ms. Burroughs concerning essentially the same subject matter.

According to Mr. Burroughs, she then obtained three contempt charges from the Family Court as a result of the two letters and one school visit. Apparently, these incidents violated the terms of the January 19, 1996 Protection from Abuse Order to which he had earlier consented. Consequently, Mr. Burroughs was arrested and arraigned

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[4] In his amended complaint, Mr. Burroughs admits that he consented to this order. While he claims the decision was "ill advised," he provides no indication of the individual who supposedly gave this advice

[5] Mr. Burroughs, however, does not specify whether this individual was Ms. Dawson or another attorney. In addition, Mr. Burroughs fails to clarify whether this attorney told him to contact Ms. Burroughs by mail or, instead, send the letter to her counsel

before Commissioner Grillo on November 4, 1996. According to Mr. Burroughs, she set bail at $1,000 for each charge. The State Attorney General's office, however, declined to prosecute.

For these purported wrongs, Mr. Burroughs seeks a minimum of $1 million in compensatory damages and $4 million in punitive damages from his former wife. And, in addition to a series of declaratory judgments, Mr. Burroughs also seeks an injunction prohibiting the disbursement of federal funds to the Domestic Violence Project and the Domestic Violence Intake Unit, of which Ms. Poule and Ms. Allen are respective members, because he believes that they invidiously discriminate against all members of the male gender who appear before the Family Court.[6]

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[6] While some of the defendants have interpreted Mr. Burroughs' allegations on this point as evincing an intent to sue as a representative of the class of men, see Fed. R. Civ. P. 23 (1998), who have suffered discrimination as a result of these alleged policies, the court interprets these allegations differently for two reasons.

First, in his caption, Mr. Burroughs states that he is appearing *individually* and on behalf of his minor children. He makes no reference to appearing on behalf of other men that might be similarly situated. Second, after reviewing the allegations of the complaint, the court believes that Mr. Burroughs has made these statements concerning men only to establish the basis for his equal protection challenge. Specifically, the court believes that Mr. Burroughs is simply attempting to set forth the basis for his allegations of gender discrimination in violation of Section 1985. ***Cf. Humphrey v. Court of Common Pleas,*** 640 F.Supp. 1239,1243 (M.D. Pa. 1986) (concluding that divorced fathers or men engaged in custody disputes failed to constitute a protected class of individuals deserving protection under the civil rights statutes). At a minimum, Mr. Burroughs concedes in his papers, he has not yet filed for class certification and is only considering a "potential" class action.

Thus, even though the court should interpret ***pro se*** pleadings liberally, ***see Manchester v. Rzewnicki,*** 777 F.Supp. 319, 324 (D.Del. 1991), the court must note that, by his own admission, Mr. Burroughs is not, at this time, pursuing any form of class-wide relief.

II. DISCUSSION

After reviewing the record before it and the relevant case law, the court believes that dismissal of this lawsuit is appropriate under the ***Rooker-Feldman*** doctrine which prohibits this court from sitting as an appellate panel in review of state court proceedings or from reviewing constitutional claims that are "inextricably intertwined" with state court decisions. ***See Logan v. Lillie***, 965 F. Supp 695, 697 (E.D. Pa 1997); ***Brooks-Jones v. Jones***, 916 F. Supp. 280, 281 (S.D.N.Y. 1996)

In particular, this court should not entertain challenges to a state court decision arising out of a judicial proceeding, "even if those challenges allege that the state court actions were [themselves] unconstitutional." ***See District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462, 486 (1983); ***see also Brookes-Jones***, 916 F. Supp. At 202 ("If ... the suit challenges the state court decision on the grounds that ... the state court committed a constitutional error in arriving at its decision, then no subject matter jurisdiction exists for the federal claim.") The reason for this approach is simple. If the court "permit[ted] a disappointed plaintiff to seek review of a state court decision in ... federal court by masquerading his complaint in the form of a civil rights action," it would effectively allow "any person dissatisfied with a state custody award [to] seek review in the federal district court under the guise of a [federal civil rights] violation." ***See Logan***, 965 F.Supp. at 697 (quoting ***Fuller v. Harding***, 699 F.Supp. 64, 67 (E.D. Pa. 1988); ***see also Brooks-Jones***, 916 F.Supp. at 281 ("A plaintiff .. `may not seek a reversal of a state court simply by casting [the] complaint in the form of a civil rights action.' ")(quoting ***Ritter v. Ross***, 992 F.2d 750, 754 (7th Cir. 1993)).

Thus, although Mr. Burroughs claims that the "focus" of his civil rights action is the "vindication of [his] federal

constitutional rights [which were] systematically and invidiously infringed" upon by the defendants, the court believes that these rights are "inextricably intertwined" with the state court proceedings. ***See Behr v. Snider***, 900 F.Supp. 719, 724-25 (E.D. Pa. 1995). Specifically, any "vindication" of his rights would necessarily require a finding that (1) Commissioner Grillo incorrectly or improperly entered the two ex parte custody orders which led up to the January 19, 1996 Protection from Abuse Order to which Mr. Burroughs consented, (2) the Protection from Abuse Order was itself incorrectly or improperly granted, despite the fact that Mr. Burroughs consented to it, and then (3) Commissioner Grillo incorrectly or improperly held Mr. Burroughs in contempt for violating the provisions of this order by twice writing to his former wife and once contacting her at a school event. For this very reason, the court cannot exercise jurisdiction over this lawsuit. ***See Logan***, 965 F.Supp. at 699' ***Brookes-Jones,*** 916 F. Supp. At 281-82; ***Behr***, 900 F.Supp. at 724-25. As all of these courts have noted, the appropriate avenue of relief begins with the state appellate process and, ultimately, ends at the United States Supreme Court.

Consequently, IT IS HEREBY ORDERED that:

1. The Motions to Dismiss filed by Defendants Linda Olsen Burroughs (D.I. 21), Lois J. Dawson (D.I. 23), Carolee M. Grillo and Debbie Allen (D.I. 14, D.I. 35) and Brigette Poule (D.I> 28) are GRANTED; and
2. All Claims against the Defendants in the Amended Complaint (D.I. 27) are DISMISSED.

Date: 6/2/99

Gregory M. Sleet
U.S. DISTRICT COURT JUDGE

APPENDIX C

Excerpts from "Delaware Law Enforcement Domestic Violence Supervisory Training Manual", of record, as submitted by Petitioner for probative value in establishing probability of success of Amended Complaint

"Presented by the Domestic Violence Coordinating Council"(D.V.C.C.)[1]

"With funding provided through the **Violence Against Women** Act Implementation Committee from the United States Department of Justice Programs, **Violence Against Women Grants Office**"

"3. Twenty-two to twenty-five percent of hospital emergency room visits **by women** are related to domestic violence." P.17

"E.3 **Perpetrators** will deny or minimize the violence when confronted [i.e. "**she** bruises easily", "I had to restrain **her**"] P.23

"A.1(b) The Uniformed Crime Report of the United States reported that of the 4399 **women murdered** in 1990, 30% were killed by **husbands or boyfriends**." P.27

"A.3 **Victim** may be pressured by family, friends, clergy, etc. not to leave.

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[1] It is important to note that the D.V.C.C. is a State agency which receives V.A.W.A. funding, is chaired by the Chief Judge of the Family Court, housed in the Family Court building and located next to the Chief Judge's office.

"a. **mother** may feel additional pressure to stay with the children's father.

"b. may believe that the children should be with their father regardless of what **he does to her**." P.28

"A.5. **Victim** may also be economically unable to leave and care for **herself** and her children" P.28

"A.6(a) blames **herself**, feelings of failure because **she** could not make things work." P.28

"B. Arrival

B.5. At the door one officer stands on the knob side a few feet away from the hinged side. This way to fire on you, upon opening the door, a **suspect** would have to expose **himself** past the door jamb to target you." P.109

"Interviewing the **Suspect**

1. "Things to do and say:

- "Allow **the accused** to give **his** account of what happened before accusing or confronting about information that contradicts **his** story.
- "Align with **the batterer** without justifying **his** criminal activity. Acknowledge **his** feelings
- "Require **the abuser** to clarify ambiguous, minimizing-language about **his** actions.
- "Tell **the perpetrator** if YOU are pressing the charges. This can remove the temptation for **him** to pressure the victim to drop the charges.

2. "Things not to say or do:

- "Verbally "bash" the **victim or others like her**, once you have left the scene
- "Identify the **suspect** by a label the **suspect** will find demeaning ('**wife beater**," or "a drunk," etc.) Rather than taking time to examine **his** own behavior, **he** will be feeling **he** is being victimized and become angry with you.

3. Observe common on-scene **suspect** behaviors

- "Attempting to lure the officer into **his** belief system, like, "You know how it is," and "What would you do?"
- "Intimidating the **victim** to prevent **her** from holding **him** accountable"
- "c. denying the **victim** access to resources **she** would need: the telephone, the car, the checkbook." Pp. 119-121

"Preparing a case for trial

"2. You must interview the **victim** alone.

a. "If **she** is afraid to talk to you about what happened, reassure **her** that **she** can put on a show in front of the **defendant** and cuss you out and take **his** side.

b. "Make sure you note all areas where **she** indicates **she** was injured or hit, using a diagram or rough sketch if possible.

c. "Take notes of **her** demeanor and **her** words, especially the verbs, describing what happened to **her.** Even if **she** later decides not to be cooperative with the prosecutor, you may be used to substitute for **her** in describing what happened, either as in 11 Del.C. sec 3507 or as an exception to the prohibition to the hearsay rules.

d. "Be sure to ask **her** what the defendant said to **her** before, during and after the assault, not only for its evidentiary value but also to help the prosecutor to understand the dynamics.

e. "Ask **her** about prior violence or threats of violence to **her,** the children or pets. Ask **her** if **she** is aware of violence in prior relationships in which the defendant was involved and try to get names and addresses for later use in showing a pattern of conduct or intent.

f. "Ask **her** about names and addresses of friends or relatives who can help protect her (and who can help locate **her if she** is not cooperative later on.

g. "Discuss the availability of a protective order through the Family Court and advise **her** that **she** does not have to hire an attorney to get one. Tell **her she** will be represented by the Attorney General's Office in the criminal case and that that office will contact **her**.

h. Give **her** the names and phone numbers of police based victims services units if available.

i. (omitted, no gender reference)

j. "Take the **victim** to a place of safety if **she** desires and record that location and the names of persons who accepted **her** so they can be contacted by the prosecutor for further information on the victim's statements or whereabouts." Pp. 133-135

"3. Look for and interview **the defendant** alone.

a. "Note **his** appearance, demeanor, and physical condition, taking pictures or making a sketch if appropriate.

b. "Record **his** exact utterances to other persons that you observed.

c. (omitted, no gender reference)

d. "Record **his** exact words to you including excuses, admissions and threats.

e. Determine whether **the defendant** spoke to any other persons or police officers and find out what **he** said to each.

f. "Check **the defendant's** criminal history if **his** story sounds even remotely plausible." P. 135

(Emphasis supplied as **bold typeface** for gender and victim/perpetrator status references.)

Supreme Court, U.S.
FILED
AUG 8 2000
CLERK

(2)

No. 00-84

IN THE

Supreme Court of the United States

DAVID R. BURROUGHS
as father, next friend and guardian of his minor children,
Zachary R. Burroughs and Alexandra J. Burroughs,

Petitioner,

v.

DOMESTIC VIOLENCE PROJECT, DELAWARE FAMILY COURT DOMESTIC VIOLENCE INTAKE UNIT, BRIDGET POULLE, DEBBIE ALLEN, HON. CAROLEE M. GRILLO, LOIS DAWSON and LINDA J. OLSEN BURROUGHS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT LOIS DAWSON

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3 pp

Respondent, Lois Dawson, Esquire, respectfully asks that Your Honorable Court deny David R. Burroughs' petition for writ of certiorari.

As reflected in their respective, unpublished opinions, both the Court of Appeals and the District Court cogently and correctly perceived that Mr. Burroughs' claims were inextricably intertwined with the merits of the state courts' rulings. Mr. Burroughs' claims were thus subject to the *Rooker-Feldman* doctrine, because they effectively asked the federal courts to act as appellate courts to review and adjudicate the constitutionality of the state courts' proceedings and rulings.

Respondent Dawson also suggests that the petition should be denied as to her, because Mr. Burroughs' purported restriction of his claims to a quest for prospective injunctive relief to reform Delaware' domestic relations operations presents a case to which respondent Dawson is not a proper party.

For those reasons and for the reasons presented by the lower courts' opinions and by the other respondents, respondent, Lois Dawson, Esquire, respectfully asks Your Honorable Court to deny Mr. Burroughs' petition for writ of certiorari.

Respectfully submitted,

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